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facts or circumstances unknown to a petitioner that could not be discovered through the exercise of ordinary diligence are required for reconsideration to be had. Letter No. 2 was obtained by Kay at a Sheriff's auction of Gerard Pick's property on September 15, 1997. The auction was conducted to satisfy a judgment Kay obtained against Pick. Before this time, Kay neither knew of Letter No. 2's existence, had no reason to believe that it existed, nor had ability to examine the document. Therefore, contrary to the Bureau's assertion, Kay could not have obtained a copy of Letter No. 2 earlier through the exercise of due diligence. In fact, no possible exercise of diligence could have led to its discovery before September 15, 1997, since Letter No. 2 was held in Gerard Pick's personal files. As such, Letter No. 2 constitutes new evidence sufficient to meet the requirements of the Commission's Rules for reconsideration.

The Bureau also claims in its Opposition that Letter No. 2 does not provide a basis for reconsideration because there is no evidence that the Presiding Officer or the Commission received Letter No. 2, and thus Letter No. 2 could not have effected a decision on the Motion to Disqualify. Since Letter No. 2 was not discovered until September 15, 1997, the Commission and the Presiding Officer only considered Letter No. 1 in denying Kay's Motion to Disqualify. Under these circumstances, Kay does not (and could not) raise any question as to the delivery of Letter No. 1 to the Presiding Officer (Bureau's Opposition, ¶ 5). Rather, Kay asserts that any search of the Commission's and the Presiding Officer's files was undertaken only with reference to Letter No. 1. Letter No. 2 contains new information (i.e., date and the Washington D.C. address of the Commission) and is more than sufficient to require reconsideration. At a minimum, the Commission must conduct an investigation regarding its receipt of ex parte communications in violation of its own rules.

The Bureau draws a distinction without a difference in dismissing Letter No. 2's reference to a Washington D.C. address as "parenthetical." A brief inspection of the two letters reveals that Letter No. 2 is different from Letter No. 1. In addition, Letter No. 2 contains significant information that was obstructed in Letter No. 1. The absence of this information in Letter No. 1 was one of the reasons why the Motion to Disqualify was initially denied.

Finally, contrary to the Bureau's unsupported contention that exploring any ex parte communications evidenced by Letter No. 2 would be a "gross disservice to the public interest" (Opposition at ¶ 7), the public's interest and confidence in a fair and impartial judiciary is far greater than any delay in bringing this case to trial. See, e.g., United States v. Hollister, 746 F.2d 420, 425 (8th Cir. 1984). This is particularly true if the Commission chooses to look the other way in the face of documentary evidence of the possible existence of an illegal ex parte communication from an interested party to this proceeding seeking to prejudice the case against Kay.

WHEREFORE, for the reasons set forth above and in the Petition, James A. Kay Jr. requests that the Commission grant his Petition for Reconsideration.

Respectfully submitted,

JAMES A KAY, JR.

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Dated: November 17, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing James A. Kay Jr.'s Reply to Wireless Telecommunications Bureau's Opposition to Petition for Reconsideration was hand-delivered on this 17th day of November, 1997, to the following:

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and sent via first-class mail, postage pre-paid on this 17th day of November, 1997, to:

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